

## Message Text

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ORIGIN EB-08

INFO OCT-01 ISO-00 AF-10 ARA-14 EA-12 EUR-12 NEA-11  
AGRE-00 CEA-01 CIAE-00 COME-00 DODE-00 FRB-01  
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PA-02 CTME-00 AID-05 SS-15 STR-07 ITC-01 ICA-20  
SP-02 SOE-02 OMB-01 DOE-15 TRSY-06 XMB-04 OPIC-06  
JUSE-00 /185 R

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TO ALSTEEL COLLECTIVE

UNCLAS STATE 142835

USEEC ALSO FOR EMBASSY; USOECD ALSO FOR EMBASSY

E.O. 11652: N/A

TAGS: ETRD, US

SUBJECT: TRIGGER PRICE MECHANISM: DETAILS OF DISTRICT  
COURT RULING ON WIRE ROD

REF: A) STATE 134690 B) STATE 81010

1. AS REPORTED REF A, U.S. FEDERAL DISTRICT COURT RULED  
MAY 25 IN FAVOR OF USG IN CASE CHALLENGING LEGALITY OF  
TRIGGER PRICE MECHANISM AS IT PERTAINS TO IMPORTS OF WIRE  
ROD. SPECIFICALLY THE COURT ORDERED THAT A) THE PRELIMINARY  
INJUNCTION AGAINST THE ENFORCEMENT OF THE TPM AS IT  
PERTAINS TO WIRE ROD BE DISSOLVED, B) THE DAVIS WALKER  
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(PLAINTIFF) MOTION FOR CONTINUANCE OF THE PRELIMINARY  
INJUNCTION BE DENIED, AND C) THE ENTIRE ACTION BE DISMISSED  
WITH PREJUDICE. COURT GRANTED SUMMARY JUDGMENT IN FAVOR  
OF USG REGARDING ALL THREE ARGUMENTS ADVANCED BY DAVIS  
WALKER. DETAILS OF JUDGE'S MEMORANDUM IN PARA 2-5 MAY BE  
OF INTEREST TO POSTS.

2. DAVIS WALKER HAD ARGUED THAT THE TPM VIOLATES THE ANTIDUMPING ACT BY DETERRING THE IMPORTATION OF GOODS AT LESS THAN TRIGGER PRICE AND THEREBY ESTABLISHING THE TRIGGER PRICE AS THE MINIMUM PRICE FOR THE AFFECTED GOODS.

COURT FOUND THAT TPM IS WITHIN TREASURY'S AUTHORITY TO ADMINISTER THE ACT. REJECTING DAVIS WALKER'S CLAIM THAT THE TPM HAS RESULTED IN A UNIFORM PRICE INCREASE TANTAMOUNT TO AN ACROSS-THE-BOARD IMPOSITION OF A DUMPING DUTY, THE COURT NOTED: BEGIN QUOTE. THE DECISION BY FOREIGN MANUFACTURERS TO INCREASE PRICES TO THE TRIGGER PRICE LEVEL IS NOT THE LEGAL EQUIVALENT OF THE IMPOSITION OF DUMPING DUTIES WITH RESPECT TO ALL SUCH GOODS IMPORTED AT THE TRIGGER PRICE LEVEL. MOREOVER, THE DECISION OF FOREIGN STEEL WIRE ROD MANUFACTURERS TO INCREASE PRICES DOES NOT ALLOW THE SECRETARY TO AVOID THE STATUTORY PROCEDURES. ...EVEN IF PLAINTIFFS' ALLEGATIONS CONCERNING THE FACTUAL EFFECTS OF THE TPM (I.E. FOREIGN MANUFACTURERS' REFUSAL TO SELL STEEL WIRE ROD AT LESS THAN TRIGGER PRICES) WERE TRUE, THE TPM WOULD NOT BE CONTRARY TO THE ANTIDUMPING ACT. END QUOTE.

3. DAVIS WALKER ALSO HAD ARGUED THAT THE TPM IS INVALID FOR FAILURE TO COMPLY WITH THE RULEMAKING REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURES ACT (APA). THE APA REQUIRES PUBLIC NOTICE AND COMMENT PROCEDURES FOR SUB-UNCLASSIFIED

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STANTIVE RULES BUT SPECIFICALLY EXEMPTS BEGIN QUOTE INTERPRETATIVE RULES, GENERAL STATEMENTS OF POLICY, OR RULES OF AGENCY ORGANIZATION, PROCEDURE, OR PRACTICE END QUOTE FROM THESE REQUIREMENTS. THE COURT VIEWED THE TPM AS A POLICY STATEMENT, SERVING TO APPRISE THE PUBLIC AND GUIDE THE TREASURY IN THE ADMINISTRATION AND ENFORCEMENT OF THE ANTIDUMPING ACT. THE COURT ALSO CITED THE MARCH 24 TREASURY HEARINGS ON THE WIRE ROD QUESTION (REF B) AND NOTED THAT THERE WOULD BE LITTLE TO GAIN FROM ORDERING TREASURY TO FOLLOW THE NOTICE AND COMMENT PROCEDURES OF THE APA.

4. WHILE NOT ESSENTIAL TO HOLDING, COURT ALSO REFERRED IN HIS MEMO TO POLICY CONSIDERATIONS THAT SUPPORTED ITS REJECTION OF DAVIS WALKER'S ARGUMENT ON THE APA: BEGIN QUOTE A DECISION THAT THE TPM INsofar AS IT PERTAINS TO STEEL WIRE ROD IS INVALID BECAUSE OF A FAILURE TO COMPLY WITH THE APA RULEMAKING REQUIREMENTS WOULD EFFECTIVELY INVALIDATE THE ENTIRE TPM. SUCH ACTION WOULD SERIOUSLY HINDER THE TREASURY IN ITS EFFORTS TO ADDRESS THE CRITICAL ECONOMIC PROBLEMS IN THE UNITED STATES STEEL INDUSTRY END QUOTE.

5. FINALLY, DAVIS WALKER HAD ARGUED THAT THE TPM AS IT PERTAINS TO WIRE ROD IS BEGIN QUOTE ARBITRARY AND CAPRICIOUS END QUOTE, A VIOLATION OF ANOTHER SECTION OF THE APA. DAVIS WALKER HAD CLAIMED THAT DECISION TO LIMIT TPM TO AISI STEEL MILL PRODUCTS ONLY, WHICH

INCLUDE WIRE ROD BUT EXCLUDE MANY WIRE AND WIRE PRODUCTS, WAS ARBITRARY. DAVIS WALKER ALSO HAD CONTENDED THAT WIRE ROD TRIGGER PRICE WAS SET TOO HIGH. DESPITE THE GRANTING OF BEGIN QUOTE UNUSUALLY EXTENSIVE DISCOVERY ON AN EXPEDITED BASIS END QUOTE. (A REFERENCE TO DAVIS WALKER'S ACCESS TO CONFIDENTIAL COST OF PRODUCTION DATA SUPPLIED BY THE JAPANESE), THE COURT RULED THAT UNCLASSIFIED

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THE PLAINTIFFS HAD FAILED TO DEMONSTRATE THAT THERE WAS NO RATIONAL BASIS FOR ANY OF TREASURY'S DECISIONS IN ESTABLISHING THE TPM.

6. AS INDICATED REF A, DAVIS WALKER ON MAY 26 FILED A NOTICE OF ITS APPEAL TO THE U.S. COURT OF APPEALS OF THE DISTRICT COURT DECISION. VANCE

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## Message Attributes

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